



Informal Hearing Determination

Company: Barnette Energy, LLC **Permit No.:** 1101978

Subject: Notice of Violation HNM0004922,
violations 1 and 2 of 2

Conference: July 10, 2012 10:00 a.m. **Location:** Mine site

Participants: Kathy Sevilla (Business Manager), Roger Layne (Superintendent), Heather McDonald-Taylor (Inspector)

Summary of Informal Hearing

An informal hearing was conducted on July 10, 2012 at the mine site of Barnette Energy 10:00 a.m. This informal hearing was to address the issuance of violations 1 and 2 of 2 of Notice of Violation No. HNM0004922. Present at the hearing were DMME personnel Area Inspector Heather McDonald-Taylor. Representing the company at the hearing were Kathy Sevilla and Roger Layne. No other members of the public attended this hearing.

Notice of Violation HNM0004922 violation 1 of 2 was issued to the company because the company failed to complete rough backfilling and regrading on the south side of Mill Creek within 180 days following coal removal. Approximately 2,040 feet of highwall remains open on the south side of Mill Creek. Of the 2,040 feet of highwall open on the south side of Mill Creek all but 340 feet was included in this violation. The 340 feet of wall not included in the violation is located on the Hagy coal seam just west of Pond 11. This violation includes all other wall on the Upper Banner, Splashdam and Hagy coal seams.

Superintendent Layne began by stating that they had made diligent efforts to complete the backfilling and grading as quickly as possible. He noted that they had a contractor working even now to get the reclamation done as soon as possible. The contractor should complete the final areas included in the violation by the end of next week.

Mr. Layne also noted that there was an existing outstanding notice of violation for backfilling and grading. He stated that the company had placed all their efforts and resources into taking care of that violation. That was why they received **this** violation. He repeated that they were doing all that they could to catch everything up.

Notice of Violation HNM0004922 violation 2 of 2 was issued to the company because the sediment in pond 11 had exceeded the 60% cleanout level. Mr. Layne noted that he had procured additional equipment to clean the pond. He noted an access road had to be created so that he could get the equipment to the pond 11 to clean it.

Informal Hearing Recommendation

I have reviewed violations 1 and 2 of 2 of Notice of Violation No. HNM0004922 issued to Barnette Energy , LLC's permit number 1101978. I have also examined the associated inspection reports, the operator's approved original plans, the permit revisions associated with permit number 1301714, and the Virginia Coal Surface Mining Reclamation Regulations. I completed my review on July 16, 2012

NOV HNM0004922 violation 1 of 2

The operator's approved plans clearly lay out the time and distance requirements. Section 13.1 of the original permit notes,

"Extended distance and time limits for backfilling and grading of the permit are needed. Multiple seams are being mined in a series of cuts, resulting in large final highwalls. With highwall heights of as much as 280 feet, backfilling ramps to transport spoil from mined-out pits to the top of the spoil regrade must be at least 2800 feet long to maintain a maximum safe gradient of 10%. In addition to the regrade ramp, the coal removal area is worked in two or more pits on different seam levels with each pit ranging from 300 to 500 feet. Auguring operations occupy another 100 to 300 feet of mining area. Thus, the typical length of the coal removal area is 700 to 1300 feet. Another 500 feet is required for area of initial overburden removal (including topsoil removal, drill benching, drilling and blasting). Therefore a total highwall length of 4200 feet in each mining area is requested. Rough backfilling and grading operations will be completed within 180 days and 2400 feet following coal removal in the lowest seam to be mined."

While the efforts of the operator to bring reclamation current are noted, he was still in violation of Section 4VAC-25-130-816.102 of the VCSMRR. Therefore, Violation 1 of 2 is hereby affirmed.

NOV HNM0004922 violation 2 of 2

Violation 2 of 2 was issued to the operator because Pond 11 had exceeded the cleanout level in violation of 4 VAC-25-130-816.45 (a) (1) of the VCSMRR. Item 12.3 of the approved plan states that ponds will be inspected and maintained on a regular basis and that each structure will be cleaned out upon reaching 60% of its sediment storage capacity. The operator has not performed maintenance on the structure. Therefore, Violation 2 of 2 is hereby affirmed.

Conference Officer: _____
Harve A Mooney , Conference Officer

Date: 07/18/2012